



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

to manage its trains, or to run them in any particular manner, or a particular rate of speed.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, §§ 1235-1237.]

5. Same—Declaration.—Where, in an action against a railroad company for death of a bare licensee on the track, the declaration merely alleged that defendant was negligent in pushing its train of cars in front of the engine across the trestle without any lookout on the end of the cars and at a rate of speed forbidden by the city ordinances, the proximate cause of deceased's death was thereby attributed to the combined effect of such breaches, and defendant being under no obligation to deceased, except not to operate its cars in violation of the ordinance, the declaration was insufficient:

6. Negligence—Pleading—Duty.—In an action founded on defendant's negligence, the declaration must directly and positively allege, otherwise than by mere recital, what duty was owing by defendant to plaintiff, the failure to discharge which caused the injury complained of and its breach, or aver such facts as will show the existence of the duty and its breach.

[Ed. Note.—For cases in point, see vol. 37, Cent. Dig. Negligence, §§ 174, 175, 182-184.]

SANDS *v.* STAGG et al.

June 14, 1906.

[54 S. E. 21.]

1. Appeal—Assignments of Error—Time—Reply Brief.—An assignment of error, made for the first time in appellant's reply brief, will not ordinarily be considered, for failure to comply with Code 1904, § 3464, providing that a petition for appeal, etc., shall assign errors and shall not be presented until certified by counsel.

[Ed. Note.—For cases in point, see vol. 2, Cent. Dig. Appeal and Error, § 1960; vol. 3, Cent. Dig. Appeal and Error, § 3097.]

2. Vendor and Purchaser—Right to Conveyance—Liens.—Where a vendee, for the purpose of erecting a building on the premises to be conveyed, borrowed money from the vendor with the understanding that the loan should be repaid before the property was conveyed, and the houses in process of construction, two of which were to belong to the vendor under the contract of sale, were burdened with mechanics' liens, the vendor was entitled to repayment of the sum advanced and to have his two houses and lots freed from the liens before being compelled to convey the balance of the property to the vendee.

3. Same—Transfer by Purchaser.—R. contracted to erect five houses on certain property belonging to M., and for the furnishing of the material and doing the work and completing two of the houses M.

agreed to convey to R. the residue of the lot on which the other three houses were erected at the price of \$6,300, and in addition to pay him \$2,420. In order to assist R. in performing the contract, M. procured an advancement of \$3,000 to R., which it was agreed should be repaid before R. should be entitled to a conveyance; but before such amount was paid, and while M.'s houses were subject to mechanics' liens, R. conveyed one of the houses to A. Held, that though the mechanics' liens could not be enforced against A.'s house, because he was not sued within the time prescribed by law, it was nevertheless liable for any balance remaining after application of the proceeds of the other houses and lots to be conveyed to R. to the payment of the \$3,000 loan and the mechanics' liens on M.'s houses.

LASKEY v. BURRILL et al.

June 14, 1906.

[54 S. E. 23.]

1. Appeal—Petition—Assignment of Error—Sufficiency.—On appeal from a decree dismissing a cause on refusing leave to file an amended bill to conform with the proof, appellant gave a history of the proceedings, the substance of the allegations in the original bill and of the amended bill, and all the evidence, and alleged that there was no variance, and that no such case was sought to be set up by the amendment that equity was justified in refusing to permit the amendment and dismiss the suit. Held, that the assignment of error was to the refusal of the court to permit the filing of the amended bill, and was sufficiently specific within Code 1904, § 3464, providing that a petition for an appeal shall assign errors.

2. Partnership—Suit for Settlement—Pleadings—Evidence.—Where, in a suit for the settlement of partnership accounts, the question was whether complainant had been induced to accept a specified sum in full of his interest in the partnership assets by reason of representations made by a copartner that the statement on which the settlement was based was correct when he knew that it was not, it was immaterial whether the statement forming the basis of the settlement when the sum was paid was on a separate paper as the allegations of the original bill indicated or was in one of the books of the partnership as the amended bill alleged.

3. Equity—Pleadings—Bill—Amendment to Conform to Proof.—Amendment to bills to conform the pleadings to the proof are freely permitted, when promptly made after the necessity arises and before final decree.

[Ed. Note.—For cases in point, see vol. 19, Cent. Dig. Equity, § 547.]

4. Same—Sworn Bill.—Where, in a suit for the settlement of partnership accounts, complainants before the rendition of a final decree